THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.21113 of 1998

31st July 2006

Between:

1. C.Narasimha Rao, S/o.C.L.Narayana Rao, 60 years, Retd.STO, 16-11-86, Pota Thota, Nellore 524 001.

And three others.

...PETITIONERS

AND

1. The Director of Treasuries & Accounts, Government of Andhra Pradesh, Hyderabad.

And one other.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.21113 of 1998

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal, Hyderabad ('the Tribunal' for brevity) in O.A.No.7342 of 1997 dated 01.12.1997, whereby the request of the petitioners/employees, who had already retired from service, not to recover the excess amounts paid to them earlier from the death-cum-retirement gratuity payable to them, was rejected, the present Writ Petition is filed.

The Tribunal held that since the petitioners herein were neither put on notice nor their explanation called for, the impugned order dated 27.01.1997 was set aside leaving it open to the respondents to take action in accordance with the rules. The respondents were also directed to keep aside the alleged amounts covered by the impugned order and consider release of the balance

of pensionary benefits to the applicants to which they were entitled to under the rules and pass appropriate orders on merits within a period of six weeks from the date of receipt of a copy of that order. Pursuant thereto, memo dated 11.09.2002 was issued whereunder the petitioners herein were informed that since stepping up of pay of a senior with regards his juniors should be restricted to only once in one cadre under the provisions contained in the relevant Government Orders and since the petitioners did not give their consent to step down their pay, their pay which was stepped up earlier for a second time on par with their juniors and the excess pay and allowances paid to them were required to be recovered from the death-cum-retirement gratuity of the employees.

The short question which arises for consideration is as to whether the amount allegedly paid in excess to the petitioners herein could be recovered form the death-cum-retirement gratuity payable to them.

It is not in dispute that the excess amounts paid to the petitioners was not on account of any fraudulent act or misappropriation on their part. No statutory provision, which

enables the excess amounts paid, to them earlier, to be recovered from the death-cum-retirement gratuity on the mistake of the respondents earlier in stepping up their pay, has been brought to our notice. In the absence of any statutory provision enabling the respondents herein to recover the excess amounts, paid to the petitioners earlier on their pay being erroneously stepped up, from the death-cum-retirement gratuity, payable to them, the impugned order of recovery is liable to be set aside.

The Writ Petition is allowed and the order of the Tribunal to the extent excess amounts paid to them earlier, was directed to be recovered under the impugned memo, is set aside. The respondents herein shall pay the amounts, set apart, to the petitioners herein within a period of three months from the date of receipt of a copy of this order. No costs.

(B.PRAKASH RAO, J)

(RAMESH RANGANATHAN, J)

31st July 2006
RRB

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